



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[USCG-2021-0130]

RIN 1625-AA00

### Safety Zone; Atlantic Intracoastal Waterway, Horry County, SC

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing an emergency temporary safety zone that includes all waters of the Waccamaw River from Enterprise Landing at Atlantic Intracoastal Waterway (AICW) statute mile 375 north to Fantasy Harbour Fixed Bridge at AICW statute mile 366. The safety zone is needed to protect persons and property during a period of high water in the area caused by heavy rainfall and runoff. Vessels operating within the zone shall proceed at speeds that do not create a wake. Vessels that desire to transit this zone at speeds that create a wake, shall first seek authorization from the Captain of the Port (COTP) Charleston.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through March 7, 2021. For the purposes of enforcement, actual notice will be used from March 1, 2021 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0130 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule call or email Lieutenant Chad Ray, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740-3184, e-mail Chad.L.Ray@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be contrary to public interest due to waters suddenly reaching dangerously high levels. Immediate action is needed to address safety hazards created by transiting vessels’ wake, which threatens persons and property in flooded areas. It is impracticable to publish an NPRM because we must establish this safety zone by March 1, 2021.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with this emergent high water event.

**III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Charleston (COTP) has determined that potential hazards associated with the high water conditions are a safety concern for persons and property in this area. Vessels that transit the zone create a wake that exacerbates the safety hazards associated with dangerously high water levels created by recent heavy rainfall and unexpected increases in runoff. This rule is needed to protect personnel and property throughout the duration of the high water conditions.

#### **IV. Discussion of the Rule**

This rule establishes a safety zone from March 1, 2021 through March 7, 2021, or until the high water conditions subside, whichever occurs first. The safety zone will cover all waters of the Waccamaw River from Enterprise Landing at Atlantic Intracoastal Waterway (AICW) statute mile 375 north to Fantasy Harbour Fixed Bridge at AICW statute mile 366. The duration of the zone is intended to protect personnel, property, and the marine environment throughout the duration of the high water event. Vessels operating within the zone shall proceed at speeds that do not create a wake. Vessels that desire to transit this zone at speeds that create a wake, shall first seek authorization from the Captain of the Port (COTP) Charleston.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of

Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the limited duration and scope of the safety zone. The safety zone will be enforced only so long as the duration of the high water conditions, which makes it limited in duration. The safety zone is limited in scope because it only affects those areas immediately impacted by high water levels along identified sections of the Atlantic Intracoastal Waterway. The safety is limited in scope as it allows vessels to enter the zone with the approval of the COTP so long as the vessel transits the zone at speeds that do not create a wake. The Coast Guard will provide actual notification of the zone by on-scene designated representatives and broadcast notice to mariners via VHF-FM marine channel 16, and a marine safety information bulletin.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have

questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only throughout the high water conditions and will only restrict the speed at which vessels transit the 11 mile section of the Atlantic Intracoastal Waterway. It is categorically excluded from further review under paragraph L60a of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## **PART 165 -- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T07-0130 to read as follows:

### **§ 165.T07-0130 Safety Zone; Atlantic Intracoastal Waterway; Horry County, SC.**

(a) Location. All waters of the Waccamaw River from Enterprise Landing at Atlantic Intracoastal Waterway (AICW) statute mile 375 north to Fantasy Harbour Fixed Bridge at AICW statute mile 366.

(b) Definition. The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port (COTP) Charleston in the enforcement of the regulated areas.

(c) Regulations. (1) All vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the COTP Charleston or a designated representative.

(2) Persons or vessels desiring to enter, transit through, or remain within the regulated area must proceed at speeds that do not create a wake.

(3) Vessels that desire to transit this zone at speeds that create a wake, shall first seek authorization from the COTP Charleston. The COTP Charleston, or a designated representative, can be contacted via telephone at 843-740-7050, or via VHF radio on channel 16, to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP Charleston or a designated representative.

(4) The Coast Guard will provide actual notice of the zone by on-scene designated representatives and broadcast notice to mariners via VHF-FM marine channel 16, and a marine safety information bulletin.

(d) Enforcement period. This section will be enforced from March 1, 2021 through March 7, 2021, or until the conclusion of the high water conditions, whichever occurs first.

Dated: March 1, 2021.

J. D. Cole,  
Captain, U.S. Coast Guard,  
Captain of the Port Charleston.

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